

Information and Data Protection Commissioner

CDP/COMP/914/2023

vs

COMPLAINT

1. On the 27th October 2023, Mr [REDACTED] (the “**complainant**”) lodged a complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) in terms of article 77(1) of the General Data Protection Regulation¹ (the “**Regulation**”), alleging that the video device² installed by Mr [REDACTED] (the “**controller**”) is capturing beyond his private property, and therefore, the complainant considered the processing of his personal data to be an infringement of the Regulation.

INVESTIGATION

2. Pursuant to the internal investigation procedure and article 58(1)(e) of the Regulation, by means of a letter dated the 7th November 2023, the Commissioner provided the controller with a copy of the complaint and requested the controller to submit any information which he deemed relevant and necessary to defend himself against the allegation raised by the complainant. In particular, the Commissioner requested the controller to submit a copy of the image grab taken from the footage of the video device.

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

² The device is installed on the property [REDACTED]

3. By means of an email dated the 3rd December 2023, the controller provided a copy of the image grab taken from the footage of the video device and submitted the following principal arguments:
 - a. that the complainant *“resides further up in our same street however the camera being reported to you actually points to the opposite direction of his residence hence there is no way that the reported camera captures his residence and therefore we cannot understand how the camera could have processed personal data relating to Mr. [REDACTED]”;* and
 - b. that *“the camera is clearly visible (it is not hidden but fixed onto the façade) and had been installed since mid year 2019 hence for 4.5 years (there was also a period when the camera was not working due to a fire in the garage which destroyed the equipment) and from the photo provided as evidence of the complaint, one can understand that the complaint was made in the past 2 months since it clearly shows the new parking bays as re done by the local council”.*

LEGAL ANALYSIS AND DECISION

4. In principle, the Commissioner recognises the need for the installation of a video device to ensure the security and safety of private property. However, appropriate and sufficient guarantees should be effectively provided to ensure that such device is not capturing a public space and, or third-party properties.
5. In this regard, it should be pointed out that article 1 and recital 10 of the Regulation aim to ensure a high level of protection of the rights and fundamental freedoms of natural persons, in particular, article 8 of the Charter of Fundamental Rights of the European Union, which states that each and every person has the right to the protection of their personal data.
6. Having noted the email dated the 3rd December 2023, wherein the controller submitted a copy of the image grab taken from the footage of the video device, which demonstrates that the video device is excessively capturing public space. As a result, this is leading to the collection and retention of the data of all the individuals accessing the monitored area, and thus, this constitutes a processing activity in terms of article 4(2) of the Regulation.

7. The Court of Justice of the European Union in the Rynes³ judgment held that video surveillance which “covers, even partially, a public space and is accordingly directed outwards from the private setting of the personal processing the data in that manner, **it cannot be regarded as an activity which is a purely ‘personal or household’ activity**” [emphasis has been added]. This reasoning was endorsed by the Information and Data Protection Appeals Tribunal in relation to the decision ‘*Raymond u Mary Ann konjuġi Cutajar vs Kummissarju għall-Infommazzjoni u l-Protezzjoni tad-Data*’⁴, where a video device was installed on the façade of a private property in such a manner to capture public space.
8. In the present case, it is abundantly clear that the processing activity conducted by means of the CCTV does not fall within the household exemption in terms of article 2(2)(c) of the Regulation, and therefore, the processing of personal data should fully comply with the provisions of the Regulation and the rights and freedoms of the affected data subjects.
9. The principle of lawful processing, which is one of the principles of data protection, states that every processing data operation needs to have a legal basis for processing. Therefore, article 6(1) of the Regulation stipulates what could constitute as a legal basis while also considering the other principles for data processing as stipulated in article 5 of the Regulation.
10. The European Data Protection Board⁵ provides that every legal basis that falls under article 6(1) of the Regulation could provide a basis for the processing of personal data by means of video recording. The installation of the video device by private individuals which is capturing a public space is generally deemed to be unlawful, unless in very exceptional cases, the controller manages to concretely prove that there is a compelling legitimate interest to conduct this processing operation. However, even in such cases, the controller should strictly monitor the immediate surroundings of the property and not extensively monitor a public space. This leads the Commissioner to conclude that the controller had not managed to effectively demonstrate that there is indeed a lawful basis that could legitimise the processing activity conducted by means of the video device. The systematic and continuous monitoring of a public space, which leads to the processing of personal data of all the data subjects in a general and non-discriminate

³ Case C-212/13, paragraph 33.

⁴ Appeal Number 4/2019, decided on the 27th October 2020.

⁵ Guidelines 3/2019 on Processing of Personal Data through Video Devices, Version 2.0, adopted on the 29th January 2020, paragraph 16.

manner, is deemed to be unlawful and an infringement of the rights and freedoms of the data subjects.

In the light of the foregoing considerations, the Commissioner hereby decides that the processing activity undertaken by the controller by means of the video device is not in conformity with article 6(1) of the Regulation. By virtue of article 58(2)(d) of the Regulation, the Commissioner is hereby ordering the controller to adjust the angle of view of the video device in such a manner to solely capture the façade of his private property. If this is not possible due to a technical reason or any other reason whatsoever, the video device shall be removed. The controller shall comply with this order by no later than twenty (20) days from the date of receipt of this legally binding decision.

The controller is requested to inform the Commissioner of the corrective action taken immediately thereafter, supported by a copy of the image grab or photographic evidence that the device has been removed. The information about the action taken shall be submitted by means of an email on idpc.cctv@idpc.org.mt

In terms of article 83(6) of the Regulation, “[n]on compliance with an order by the supervisory authority as referred to in Article 58(2) shall, in accordance with paragraph 2 of this Article, be subject to an administrative fine up to 20 000 000 EUR”.



Ian Deguara

Information and Data Protection Commissioner

Right of Appeal

The parties are hereby being informed that in terms of article 26(1) of the Data Protection Act (Cap. 586 of the Laws of Malta), any person to whom a legally binding decision of the Commissioner is addressed, shall have the right to appeal to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof.

An appeal to the Tribunal shall be made in writing and addressed to “The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta.”

